

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT GREENEVILLE**

UNITED STATES OF AMERICA)	
)	
v.)	No. 2:17-CR-66
)	
CURTIS CARPENTER)	

MOTION FOR COMPASSIONATE RELEASE

Defendant Curtis Carpenter through undersigned counsel, hereby moves this Honorable Court pursuant to 18 U.S.C. § 3582(c)(1)(A)(i) to reduce his sentence to time served or in the alternative, to order he serve the balance of his sentence on Home Confinement or Supervised Release. As amended by the First Step Act, the compassionate release statute allows courts to reduce sentences for “extraordinary and compelling” reasons. The growing coronavirus pandemic is an extraordinary and compelling circumstance. The coronavirus and the disease it causes is currently present and extremely dangerous in the prison facility in which Mr. Carpenter is confined, and likely to be present and dangerous in any other correctional institution. Because of his underlying health conditions, Mr. Carpenter is among those at highest risk of death or serious illness if he is exposed to the disease. He has hypertension, diabetes, obesity, hyperlipidemia, and a history of pneumonia. These conditions, especially in combination, place him at heightened risk of death or serious illness if he contracts COVID-19. His immediate release is necessary.

I. Statutory Framework for Sentence Reduction Authority Under 18 U.S.C. § 3582(c)(1)(A)(i)

The Sixth Circuit succinctly set forth the statutory framework established by the First Step Act for considering a compassionate release request filed on behalf of a prisoner. *United States v. Hampton*, ___ F.3d ___ (6th Cir. Jan. 19, 2021).

By statute, three substantive requirements must be met before a district court may grant compassionate release. 18 U.S.C. § 3582(c)(1)(A); *Ruffin*, 978 F.3d 1000, 1004–05

(6th Cir. 2020). First, the court must determine that “extraordinary and compelling reasons warrant” a sentence reduction. *Ruffin*, 978 F.3d at 1004 (quoting 18 U.S.C. § 3582(c)(1)(A)(i)). Second, the court must find that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission, see U.S.S.G. § 1B1.13. *Ruffin*, 978 F.3d at 1005. Third, the court must consider the applicable § 3553(a) factors. *Id.*; see 18 U.S.C. § 3582(c)(1)(A).

Historically, only the Bureau of Prisons was authorized to seek an inmate’s release under § 3582(c)(1)(A). See *Jones*, 980 F.3d 1098, 1104 (6th Cir. 2020) (citing 18 U.S.C. § 3582(c)(1)(A) (1984)). But with the passage of the First Step Act, a prisoner may bring such a motion on his own accord, a practice we now see somewhat routinely in light of the COVID-19 pandemic. See 18 U.S.C. § 3582(c)(1)(A) (2017). And when a prisoner does so, the First Step Act renders U.S.S.G. § 1B1.13 inapplicable, meaning district courts enjoy “full discretion to define ‘extraordinary and compelling’ without consulting the policy statement § 1B1.13.” *Jones*, 980 F.3d at 1111. That leaves a district court to focus on steps one and three, as it may now “skip step two of the § 3582(c)(1)(A) inquiry.” *Id.*

Hampton gives this Court full discretion to determine what is extraordinary and compelling in each individual case that comes before the Court. Mr. Carpenter asks this Honorable Court to consider his circumstances as establishing extraordinary and compelling reasons to justify the reduction in his sentence.

II. Relevant Facts and Procedural History

Mr. Carpenter has been in custody since his arrest on July 19, 2017, now for approximately 43 months. He was convicted of conspiracy to distribute 50 grams or more of methamphetamine and sentenced to 172 months’ incarceration. Mr. Carpenter is scheduled to be released from the BOP on September 30, 2029. Mr. Carpenter now faces the threat of dying a painful death behind bars due to COVID-19, exacerbated by his serious health conditions.

With the proper conditions in place on supervised release or home confinement, Mr. Carpenter would present virtually zero risk of danger to the community. He is more than willing to comply with any conditions the Court and probation department see fit. Due to his health

conditions, Mr. Carpenter is at high risk of death or serious illness if he is exposed to Covid-19. Thus, he wishes to quarantine himself and protect himself from this virus.

III. Mr. Carpenter has exhausted administrative remedies pursuant to 18 U.S.C. § (c)(I)(A)(i).

Mr. Carpenter requested a release from the Warden on April 12, 2020 and was denied on April 22, 2020. (See Exhibit 1, Warden’s Denial). It appears Mr. Carpenter has now exhausted the available administrative remedies provided through the Bureau of Prisons.

It has also become clear that the BOP will not endorse a compassionate release motion based on an elevated risk from Covid-19. (See Exhibit 2, Petrossi Denial Letter.) That is because the BOP’s Program Statement does not make a pandemic “a qualifying factor that would warrant a motion be filed with the sentencing court.” *Id.*

IV. BOP Precautions Have Not Been Effective in Protecting Inmates from COVID-19

COVID-19 has infected more than 15.5 million people worldwide, leading to more than 634, 766 deaths. *Coronavirus COVID-19 Global Cases*, Center for Systems Science and Engineering (CSSE) at Johns Hopkins University, <https://coronavirus.jhu.edu/map.html> (updating regularly) (last accessed July 24, 2020).

A number of judges have found the BOP’s response to the COVID-19 pandemic to be inadequate. See *United States v. Hammond*, 2020 WL 1891980, at *9 (D.D.C. Apr. 16, 2020) (responding to the government’s argument that “BOP is prepared to deal with pandemics such as the coronavirus” by noting the hundreds of positive cases and sixteen inmate deaths that resulted “[d]espite the precautions taken by BOP; *United States v. Atkinson*, 2020 WL 1904585, at *3 (D. Nev. Apr. 17, 2020) (noting the “obvious shortcomings” in BOP’s Action Plan and expressing dissatisfaction with BOP’s response to the defendant’s application for compassionate release).

COVID-19 has spread quickly in the BOP, reaching at least 146 locations. 848 inmates and 1,615 staff members are confirmed positive as of March 4, 2021. There have been 46,876 inmates and 4,907 staff members that have recovered as of March 4, 2021. Additionally, 224 inmates and 4 staff members have died. www.bop.gov/coronavirus (providing daily tallies of confirmed infections) (last accessed March 4, 2021). And these are just the confirmed infections. “It is unknowable whether BOP detainees or inmates have COVID-19 until they are tested, and BOP has not conducted many or any such tests because, like the rest of the country, BOP has very few or no actual Covid-19 test packets.” Order at 5, *United States v. Caddo*, No. 3:18-cr-08341-JJT (D. Ariz. Mar. 23, 2020).

As of May 1, 2020, 70% of all inmates the BOP had tested for COVID-19 were positive.¹ At that time, only 2,700 of the 146,000 BOP inmates in the country had been tested, indicating that the numbers of inmates with COVID-19 was much higher than what had been reported. *Id.* The BOP has now administered around 24,000 tests, and the results continue to rise, reflecting a much higher infection rate in the BOP than in the general population, which can be observed in the following illustrations:

BOP-Reported COVID-19 Test Results Nationwide²

¹ “70% of inmates tested have COVID-19: Bureau of Prisons” ABC News (May 1, 2020) at <https://abcnews.go.com/US/70-inmates-tested-covid-19-bureau-prisons/story?id=70454527>.

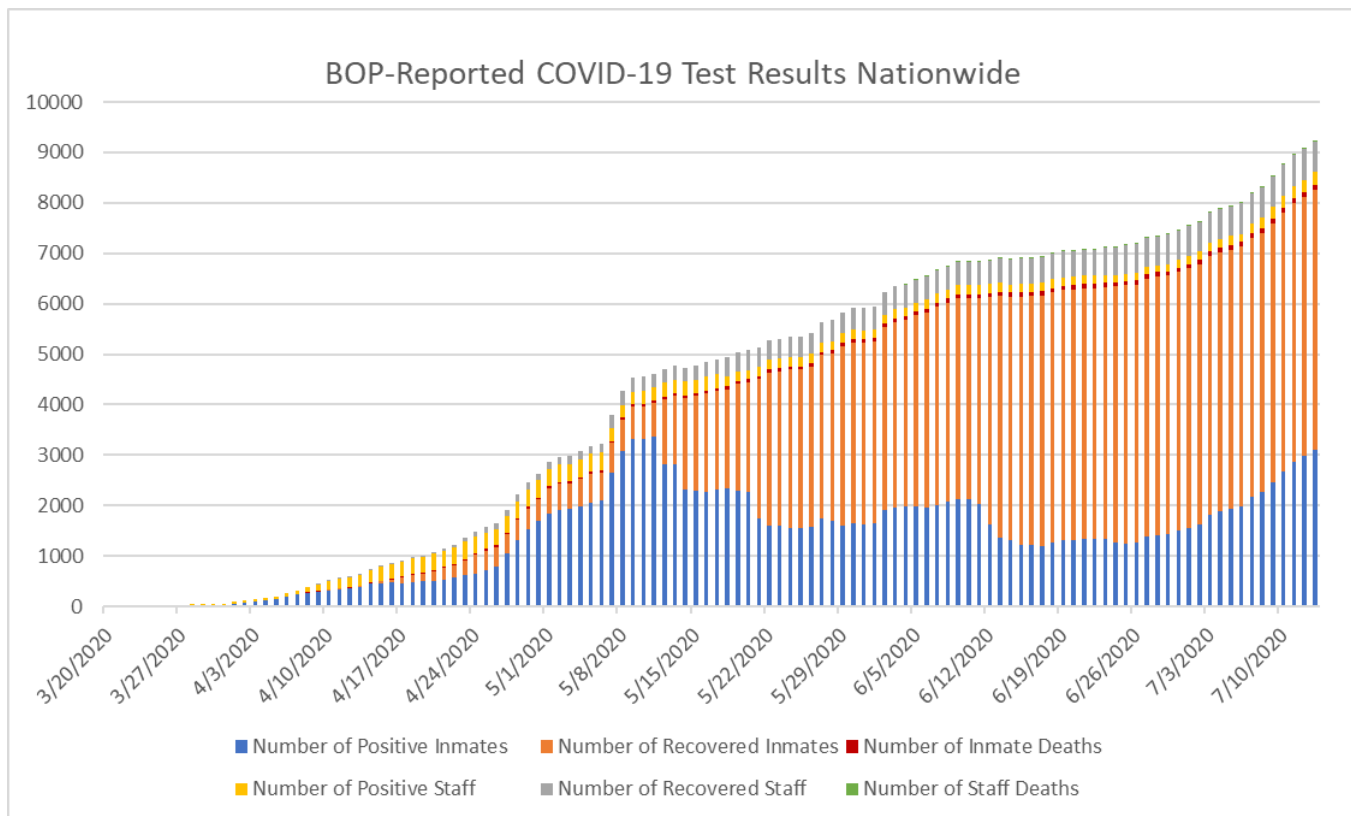
² Numbers obtained from www.bop.gov/coronavirus on a daily basis. There is good reason to believe that the numbers reported by the BOP understate the actual number of tested-positive cases. Compare M. Licon-Vitale, MCC Ward, and D. Edge, MDC Warden, *Response to EDNY Administrative Order 2020-14* (Apr. 7, 2020) at https://www.nyed.uscourts.gov/pub/bop/MDC_20200407_042057.pdf (3 positive inmates at MDC Brooklyn) with *COVID-19 Cases* Federal Bureau of Prisons (Apr. 7, 2020) at www.bop.gov/coronavirus (2 positive inmates at MDC Brooklyn).

Date	Number of Positive Inmates	Number of Recovered Inmates	Number of Inmate Deaths	Number of Positive Staff	Number of Recovered Staff	Number of Staff Deaths	Total BOP Cases
3/20/2020	0		0	2		0	2
3/21/2020	1		0	2		0	3
3/22/2020	1		0	2		0	3
3/23/2020	3		0	3		0	6
3/24/2020	6		0	3		0	9
3/25/2020	6		0	3		0	9
3/26/2020	10		0	8		0	18
3/27/2020	14		0	13		0	27
3/28/2020	19		1	19		0	39
3/29/2020	19		1	19		0	39
3/30/2020	28		1	24		0	53
3/31/2020	29		1	30		0	60
4/1/2020	57		3	37		0	97
4/2/2020	75		6	39		0	120
4/3/2020	91		7	50		0	148
4/4/2020	120		8	54		0	182
4/5/2020	138		8	59		0	205
4/6/2020	196		8	63		0	267
4/7/2020	241		8	72		0	321
4/8/2020	272		8	105		0	385
4/9/2020	283	14	8	125	7	0	437
4/10/2020	318	15	9	163	8	0	513
4/11/2020	335	15	9	185	12	0	556
4/12/2020	352	19	10	189	12	0	582
4/13/2020	388	19	13	201	12	0	633
4/14/2020	446	20	14	248	13	0	741
4/15/2020	451	49	16	280	18	0	814
4/16/2020	473	64	18	279	23	0	857
4/17/2020	465	113	18	296	25	0	917

4/18/2020	479	145	21	305	26	0	976
4/19/2020	495	155	22	309	29	0	1010
4/20/2020	497	205	22	319	33	0	1076
4/21/2020	540	220	23	323	49	0	1155
4/22/2020	566	248	24	342	52	0	1232
4/23/2020	620	302	24	357	53	0	1356
4/24/2020	649	380	25	336	98	0	1488
4/25/2020	730	383	26	317	124	0	1580
4/26/2020	799	385	27	319	124	0	1654
4/27/2020	1046	390	28	330	124	0	1918
4/28/2020	1314	404	30	335	132	0	2215
4/29/2020	1534	414	31	343	132	0	2454
4/30/2020	1692	426	33	349	132	0	2632
5/1/2020	1842	509	36	343	146	0	2876
5/2/2020	1919	515	37	349	147	0	2967
5/3/2020	1926	515	38	350	148	0	2977
5/4/2020	1984	543	40	356	149	0	3072
5/5/2020	2066	561	41	359	149	0	3176
5/6/2020	2100	559	42	365	149	0	3215
5/7/2020	2646	591	44	244	278	0	3803
5/8/2020	3082	619	45	248	279	0	4273
5/9/2020	3330	624	46	250	279	0	4529
5/10/2020	3319	656	48	250	279	0	4552
5/11/2020	3379	656	49	250	279	0	4613
5/12/2020	2817	1288	50	279	279	0	4713
5/13/2020	2820	1353	51	266	282	0	4772
5/14/2020	2322	1809	52	272	284	0	4739
5/15/2020	2296	1874	55	275	287	0	4787
5/16/2020	2280	1950	56	283	287	0	4856
5/17/2020	2319	1955	56	284	287	0	4901
5/18/2020	2338	1971	57	196	375	0	4937
5/19/2020	2298	2109	57	198	375	0	5037
5/20/2020	2267	2177	58	188	389	0	5079

5/21/2020	1735	2767	59	191	392	0	5144
5/22/2020	1594	3047	59	194	394	0	5288
5/23/2020	1603	3057	59	194	395	0	5308
5/24/2020	1558	3144	59	186	403	0	5350
5/25/2020	1556	3144	59	175	414	0	5348
5/26/2020	1577	3180	64	181	413	0	5415
5/27/2020	1747	3232	64	187	413	0	5643
5/28/2020	1693	3318	64	187	417	0	5679
5/29/2020	1610	3547	66	189	420	0	5832
5/30/2020	1649	3582	66	192	420	0	5909
5/31/2020	1629	3605	67	177	435	0	5913
6/1/2020	1650	3613	68	171	445	0	5947
6/2/2020	1904	3631	71	175	448	0	6229
6/3/2020	1956	3689	72	176	450	0	6343
6/4/2020	1993	3681	75	179	451	1	6380
6/5/2020	1981	3785	77	181	452	1	6477
6/6/2020	1957	3868	78	183	452	1	6539
6/7/2020	1999	3936	78	185	452	1	6649
6/8/2020	2068	3957	78	185	452	1	6741
6/9/2020	2125	3975	78	190	453	1	6822
6/10/2020	2134	3972	79	190	456	1	6832
6/11/2020	2024	4080	80	191	457	1	6833
6/12/2020	1622	4503	80	196	457	1	6859
6/13/2020	1374	4775	82	185	472	1	6889
6/14/2020	1324	4817	84	160	497	1	6883
6/15/2020	1220	4918	85	168	498	1	6890
6/16/2020	1209	4940	85	168	502	1	6905
6/17/2020	1190	4970	85	170	502	1	6918
6/18/2020	1266	4960	85	171	503	1	6986
6/19/2020	1318	4955	85	164	516	1	7039
6/20/2020	1327	4953	86	166	516	1	7049
6/21/2020	1351	4953	86	169	516	1	7076
6/22/2020	1346	4955	87	172	516	1	7077

6/23/2020	1349	4975	87	163	528	1	7103
6/24/2020	1260	5080	88	141	555	1	7125
6/25/2020	1249	5115	89	133	571	1	7158
6/26/2020	1263	5116	89	133	574	1	7176
6/27/2020	1386	5115	89	136	574	1	7301
6/28/2020	1422	5114	89	137	574	1	7337
6/29/2020	1442	5116	89	143	574	1	7365
6/30/2020	1513	5113	90	152	575	1	7444
7/01/2020	1563	5135	90	164	579	1	7532
7/02/2020	1634	5138	91	170	584	1	7618
7/03/2020	1813	5131	92	177	584	1	7798
7/04/2020	1888	5134	93	177	584	1	7877
7/05/2020	1932	5137	94	177	584	1	7925
7/06/2020	1992	5137	94	160	603	1	7987
7/07/2020	2163	5147	94	190	603	1	8189
7/08/2020	2267	5128	94	211	603	1	8304
7/09/2020	2459	5137	94	236	603	1	8530
7/10/2020	2666	5137	94	248	603	1	8749
7/11/2020	2860	5137	94	242	615	1	8949
7/12/2020	2983	5140	94	242	615	1	9075
7/13/2020	3112	5141	95	259	615	1	9223



COVID-19 Rate of Infection for Various Populations

Location	Cases	Population	Infections/ 1,000 People	Infection Rate as Percent of Population
BOP Imprisoned Population	8,2153	143,6564	57.19	5.7185%

3 Includes the number of BOP inmates who have tested positive for COVID-19, the number of BOP inmates who have recovered, and the number of BOP inmates who have died from COVID-19. Numbers obtained from www.bop.gov/coronavirus on a daily basis. There is good reason to believe that the numbers reported by the BOP understate the actual number of tested-positive cases. Compare M. Licon-Vitale, MCC Ward, and D. Edge, MDC Warden, *Response to EDNY Administrative Order 2020-14* (Apr. 7, 2020) at https://www.nyed.uscourts.gov/pub/bop/MDC_20200407_042057.pdf (3 positive inmates at MDC Brooklyn) with *COVID-19 Cases* Federal Bureau of Prisons (Apr. 7, 2020) at www.bop.gov/coronavirus (2 positive inmates at MDC Brooklyn).

4 Includes the number of federal inmates in BOP-managed institutions, the number of federal inmates in community-based facilities, and the number of federal inmates who have died from COVID-19. Numbers obtained from www.bop.gov/coronavirus on a daily basis.

United States	3,341,838	329,947,014 ⁵	10.13	1.0128%
China	85,1176	1,394,015,9777	0.06	0.0061%
Italy	243,2308	62,402,6599	3.90	0.3898%

	BOP has an infection rate X times higher
Compared to the United States	5.65
Compared to China	936.56
Compared to Italy	14.67

Rate of Rise of Reported COVID-19 Cases in Bureau of Prisons¹⁰
and the United States¹¹, Every 3 Days

Date	Number of BOP Cases	BOP Rate of Rise	Cumulative BOP Rate of Rise Since 3/20/2020	Number of National Cases	U.S. Rate of Rise	Cumulative U.S. Rate of Rise Since 3/20/2020
3/20/2020	2	0.00%	0.00%	18,747	0.00%	0.00%
3/23/2020	6	200.00%	200.00%	44,183	135.68%	135.68%
3/26/2020	18	200.00%	400.00%	85,356	93.19%	228.87%
3/29/2020	39	116.67%	516.67%	140904	65.08%	293.95%
4/1/2020	97	148.72%	665.38%	213144	51.27%	345.21%
4/4/2020	182	87.63%	753.01%	304826	43.01%	388.23%

5 Numbers obtained on 7/13/2020 at 4:10pm from <https://coronavirus.jhu.edu/map.html>

6 Numbers obtained on 7/13/2020 at 4:10pm from <https://coronavirus.jhu.edu/map.html>

7 Numbers obtained on 7/13/2020 at 4:11pm from <https://www.census.gov/popclock/>

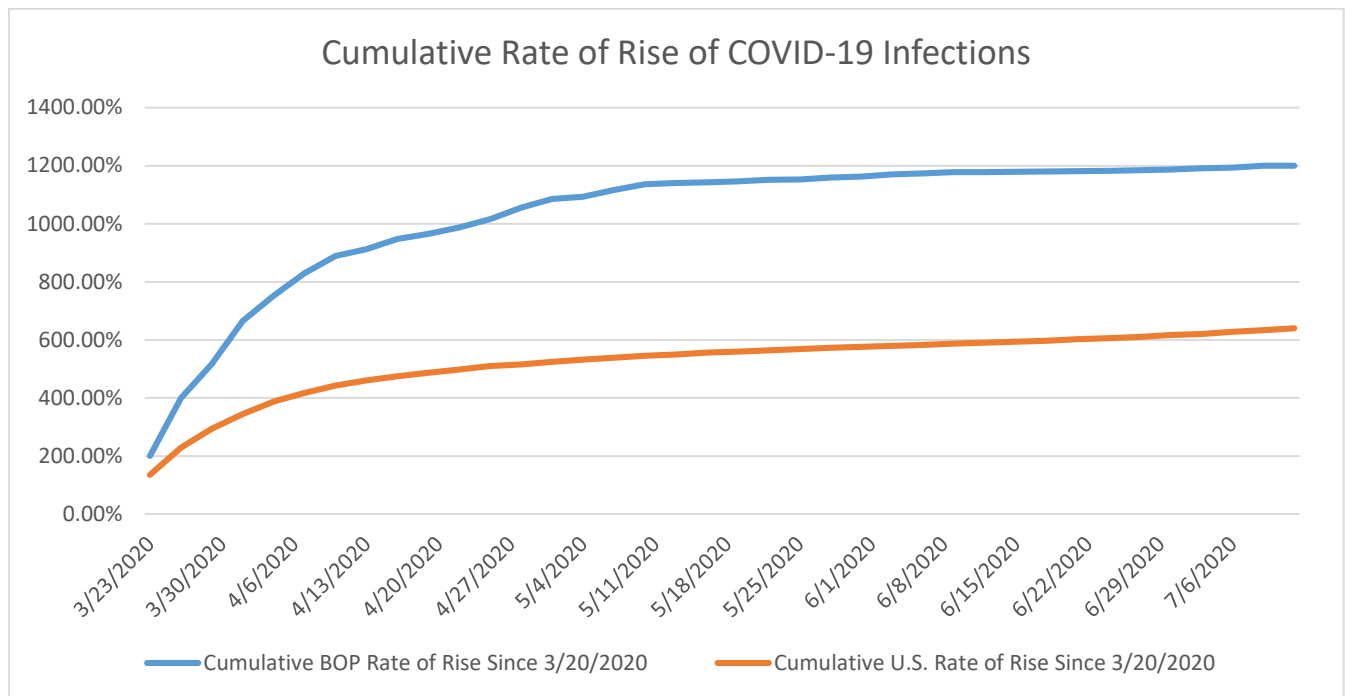
8 Numbers obtained on 7/13/2020 at 4:10pm from <https://coronavirus.jhu.edu/map.html>

9 Numbers obtained on 7/13/2020 at 4:11pm from <https://www.census.gov/popclock/>

10 Numbers obtained from www.bop.gov/coronavirus on a daily basis. There is good reason to believe that the numbers reported by the BOP understate the actual number of tested-positive cases. Compare M. Licon-Vitale, MCC Ward, and D. Edge, MDC Warden, *Response to EDNY Administrative Order 2020-14* (Apr. 7, 2020) at https://www.nyed.uscourts.gov/pub/bop/MDC_20200407_042057.pdf (3 positive inmates at MDC Brooklyn) with *COVID-19 Cases Federal Bureau of Prisons* (Apr. 7, 2020) at www.bop.gov/coronavirus (2 positive inmates at MDC Brooklyn).

11 Numbers obtained from <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>

4/7/2020	321	76.37%	829.39%	395011	29.59%	417.81%
4/10/2020	513	59.81%	889.20%	492,416	24.66%	442.47%
4/13/2020	633	23.39%	912.59%	579,005	17.58%	460.06%
4/16/2020	857	35.39%	947.98%	661,712	14.28%	474.34%
4/19/2020	1,010	17.85%	965.83%	746,625	12.83%	487.17%
4/22/2020	1,232	21.98%	987.81%	828,441	10.96%	498.13%
4/25/2020	1,580	28.25%	1016.06%	928,619	12.09%	510.23%
4/28/2020	2,215	40.19%	1056.25%	981,246	5.67%	515.89%
5/1/2020	2,876	29.84%	1086.09%	1,062,446	8.28%	524.17%
5/4/2020	3,072	6.82%	1092.91%	1,152,372	8.46%	532.63%
5/7/2020	3,803	23.80%	1116.70%	1,219,066	5.79%	538.42%
5/10/2020	4,552	19.69%	1136.40%	1,300,696	6.70%	545.12%
5/13/2020	4,772	4.83%	1141.23%	1,364,061	4.87%	549.99%
5/16/2020	4,856	1.76%	1142.99%	1,446,196	6.02%	556.01%
5/19/2020	5,037	3.73%	1146.72%	1,504,830	4.05%	560.06%
5/22/2020	5,288	4.98%	1151.70%	1,571,617	4.44%	564.50%
5/25/2020	5,348	1.13%	1152.83%	1,637,456	4.19%	568.69%
5/28/2020	5,679	6.19%	1159.02%	1,698,523	3.73%	572.42%
5/31/2020	5,913	4.12%	1163.14%	1,761,503	3.71%	576.13%
6/3/2020	6,343	7.27%	1170.42%	1,827,425	3.74%	579.87%
6/6/2020	6,539	3.09%	1173.51%	1,891,690	3.52%	583.39%
6/9/2020	6,822	4.33%	1177.83%	1,971,302	4.21%	587.59%
6/12/2020	6,859	0.54%	1178.38%	2,036,429	3.30%	590.90%
6/15/2020	6,890	0.45%	1178.83%	2,105,482	3.39%	594.29%
6/18/2020	6986	1.39%	1180.22%	2,177,842	3.44%	597.73%
6/21/2020	7076	1.29%	1181.51%	2,292,867	5.28%	603.01%
6/24/2020	7125	0.69%	1182.20%	2,364,874	3.14%	606.15%
6/27/2020	7301	2.47%	1184.67%	2,462,492	4.13%	610.28%
6/30/2020	7444	1.96%	1186.63	2,623,217	6.53%	616.80%
7/3/2020	7798	4.76%	1191.39%	2,724,640	3.87%	620.67%
7/6/2020	7987	2.42%	1193.81%	2,911,888	6.87%	627.54%
7/9/2020	8530	6.80%	1200.61%	3,084,690	5.93%	633.48%
7/12/2020	9075	6.39%	1200.61%	3,286,025	6.53%	640.00%



Mr. Carpenter is 46 years old. He suffers serious medical conditions that place him in that group: hypertension, diabetes, obesity, and hyperlipidemia. (Exhibit 3 – Medical records filed under seal). The CDC and other medical authorities have made clear that COVID-19 is especially dangerous for both older people and people with severe chronic medical conditions. *See* <https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/high-risk-complications/older-adults.html>. Eight out ten deaths reported in the United States have been in older adults. *Id.* Those with certain serious health concerns—including chronic lung disease, moderate to severe asthma, compromised immune systems, diabetes, severe obesity, renal failure, and liver disease—are also especially vulnerable to and at higher risk for serious complications from COVID-19, including death. *See* <https://www.cdc.gov/coronavirus/2019-ncov/hcp/underlying-conditions.html>. Mr. Carpenter’s obesity, diabetes and hypertension places him in the group of people with severe chronic medical conditions. He is among those with the highest risk of death or serious illness from COVID-19. Yet, as a Bureau of Prisons inmate, it is impossible for Mr. Carpenter to follow

the CDC's recommendations to protect himself from exposure to this highly-transmissible disease. This risk of serious illness or death from the unprecedented global pandemic, together with all of the other relevant factors in this case, presents an extraordinary and compelling basis for sentence reduction in Mr. Carpenter's case.

Mr. Carpenter is at FCI Edgefield which has 1 inmate and 23 staff members currently positive for COVID-19. There have been 3 inmate deaths at this facility.

V. Precedent

Multiple courts have found that the threat of COVID-19 presents "extraordinary and compelling reasons" for compassionate release. *See United States*, No. CR ELH-18-72, 2020 WL 2614816, at *7 (D. Md. May 22, 2020) ("[J]ust last week, the Department of Justice adopted the position that any inmate who suffers from the chronic conditions associated with severe illness from COVID-19 are eligible for compassionate release."); *United States v. Atkinson*, 2020 WL 1904585, at *3 (D. Nev. Apr. 17, 2020) ("The presence of COVID-19 . . . necessitates a more expansive interpretation of what self-care means" to include COVID-19 vulnerability coupled with the inability to practice CDC-recommended procedures to safeguard against transmission); *U.S. v. Esparza*, 2020 WL 1696084, at * (D. Idaho Apr. 7, 2020) (same); *see also* Government's Response in Opposition to Defendant's Motion to Reduce Sentence Pursuant to 18 U.S.C. § 3582(c)(1)(A)(i), *United States v. Hird*, Case No. 2:13-cr-39-TJS, Dkt. No. 650 (E.D. Pa. May 19, 2020) (government concession that "the risk of COVID-19" to a vulnerable inmate "presents 'a serious physical or medical condition . . . that substantially diminishes the ability of the defendant to provide self-care within the environment of a correctional facility'"); *United States v. Copeland*, No. 2:05-cr-135-DCN (D.S.C. Mar. 24, 2020) (granting First Step Act release to defendant in part due to "Congress's desire for courts to release individuals the age defendant is, with the ailments that defendant has during this current pandemic"); *United States v. Jaffee*, No. 19-cr-88 (D.D.C.

Mar. 26, 2020) (releasing defendant with criminal history in gun & drug case, citing “palpable” risk of spread in jail and “real” risk of “overburdening the jail’s healthcare resources”; “the Court is . . . convinced that incarcerating the defendant while the current COVID-19 crisis continues to expand poses a greater risk to community safety than posed by Defendant’s release to home confinement”); *United States v. Harris*, No. 19-cr-356 (D.D.C. Mar. 26, 2020) (“The Court is convinced that incarcerating Defendant while the current COVID-19 crisis continues to expand poses a far greater risk to community safety than the risk posed by Defendant’s release to home confinement on . . . strict conditions.”); *United States v. Perez*, No. 19 CR. 297 (PAE), 2020 WL 1329225, at *1 (S.D.N.Y. Mar. 19, 2020) (releasing defendant due to the “heightened risk of dangerous complications should he contract COVID-19”); *United States v. Stephens*, 2020 WL 1295155, __ F. Supp. 3d __ (S.D.N.Y. Mar. 19, 2020) (releasing defendant in light of “the unprecedented and extraordinarily dangerous nature of the COVID-19 pandemic”); *United States v. Perez*, No. 1:17-cr-513-AT, Dkt. No. 98 (S.D.N.Y. Apr. 1, 2020) (granting compassionate release where “[t]he benefits of keeping [Perez] in prison for the remainder of his sentence are minimal, and the potential consequences of doing so are extraordinarily grave”); *United States v. Rodriguez*, No. 2:03-cr-271-AB, Dkt. No. 135 (E.D. Pa. Apr. 1, 2020) (granting release after finding risk factors for COVID-19 constitute extraordinary and compelling reason and noting that prisons are “tinderboxes for infectious disease”); *United States v. Williams*, No. 3:04-cr-95-MCR-CJK, Dkt. No. 91 (Apr. 1, 2020) (compassionate release in light of severe risk posed to defendant by COVID-19); *United States v. Campagna*, 2020 WL 1489829 (S.D.N.Y. Mar. 27, 2020) (compassionate release grant).

As a result of these recent COVID-19 facts, courts have found that inmates who have tested positive for COVID-19 and who have recovered are eligible for compassionate release, as contracting the virus once does not mean an inmate is immune and the facilities in which they

reside have proven that they are unable to protect inmates from the virus. *See United States v. Barajas*, No. 18-CR-736-4 (NSR), 2020 WL 3638584 (S.D.N.Y. July 6, 2020); *United States v. Jacobs*, No. 4:19-CR-00149, 2020 WL 3637625 (S.D. Iowa July 2, 2020); *United States v. Chargualaf*, No. CR 95-00054, 2020 WL 3619007 (D. Guam July 2, 2020); *United States v. Rachal.*, No. CR 16-10043-NMG, 2020 WL 3545473 (D. Mass. June 30, 2020); *United States v. Heyward*, No. 17-CR-527-PWG, 2020 WL 3547018 (D. Md. June 30, 2020); *United States v. Yellin*, No. 3:15-CR-3181-BTM-1, 2020 WL 3488738 (S.D. Cal. June 26, 2020); *United States v. Kess*, No. CR ELH-14-480, 2020 WL 3268093 (D. Md. June 17, 2020); *United States v. Williams*, No. 19-CR-134-PWG, 2020 WL 3073320 (D. Md. June 10, 2020); *United States v. Snell*, No. CR 16-20222-6, 2020 WL 2850038 (E.D. Mich. June 2, 2020); *United States v. Barber*, 6:18-cr-00446-AA, Dkt. No. 55 (D. Or. May 12, 2020); *United States v. Huntley*, 1:13-cr-0119-ABJ-1, Dkt. No. 263 (D. D.C. May 5, 2020); *United States v. Fischman*, 4:16-cr-00246-HSG-1, 2020 WL 2097615 (N.D. Cal. May 1, 2020); *United States v. Johnson*, 1:17-cr-00482-JSR-1, Dkt. No. 116 (S.D. N.Y. May 1, 2020) (Rakoff, J.).

The sum of Mr. Carpenter’s conditions creates “extraordinary and compelling reasons” for his release.

VI. A Sentence Reduction is Consistent with Consideration of the 18 U.S.C. § 3553(a) Factors

When extraordinary and compelling reasons are established, the Court must consider the relevant sentencing factors in § 3553(a) to determine whether a sentence reduction is warranted. 18 U.S.C. § 3582(c)(1)(A)(i). Under all of the circumstances in this case, the Court should conclude that the time that Mr. Carpenter has already served is sufficient to satisfy the purposes of sentencing. Under *Pepper v. United States*, 562 U.S. 476, 490-93 (2011), the Court can, and indeed must, consider post-offense developments under § 3553(a).

Moreover, the circumstances facing the Court today with the COVID-19 crisis provide justification to act decisively. Although Mr. Carpenter's crime certainly deserved punishment, it does not rise to the level of a crime that would merit a death sentence. Leaving Mr. Carpenter in FCI Edgefield would put him at great danger of a painful and inhumane death. But given the fact that COVID-19 is exponentially rising in prisons all over the country, transferring him to another facility does not protect him or others from that fate.

In sum, the totality of the circumstances demonstrates that reducing Mr. Carpenter's sentence to time served or releasing him to serve the balance of his sentence on home confinement is "sufficient, but not greater than necessary," to serve the purposes of sentencing under § 3553(a). Should the Court deem it necessary, the Court may substitute the incarceration time for additional supervised release. Mr. Carpenter should be allowed to recover from home, self-quarantining there rather than remaining at the Bureau of Prisons subject to contracting the disease again once he has fully recovered. Upon his release, he plans to live with his wife in Whitesburg, Tennessee. Here, he will have emotional and financial support, along with access to medical care that is necessary to treat his medical conditions. With his medical conditions, his desire to be with his family, and his family's desire to be with him, Mr. Carpenter poses little to no risk of reoffending.

VII. Conclusion

The threat of COVID-19 is very real in Edgefield, South Carolina. Mr. Carpenter is statutorily eligible for release, and does not present a danger to society. Thus, it is appropriate for this Court to grant a reduction in his sentence to time served.

RESPECTFULLY SUBMITTED:

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